

CALCUTTA HIGH COURT

Shooshee Bhusan Rudro

Vs

Gobind Chunder Roy

(O'Kinealy and Ghose, JJ.)

15.12.1890

JUDGMENT

O'kinealy and Ghose, JJ.

1. In this case a rule was issued calling upon one of the parties in the case to show cause why an order of the Munsif of Goalundo, dated the 4th August last, should not be set aside. The facts are shortly as follows. A sale took place under the Rent Act, and after the sale the judgment-debtor applied to the Munsif to have the sale set aside. He deposited in Court for payment to the decree-holder the amount decreed with costs, and for payment to the purchaser 5 per cent. on the purchase-money. That application was made on the 21st July. The sale took place on the 20th June. So that more than 30 days, the time allowed by Section 74 of the Rent Act, had elapsed between the sale and the application. The application was made one day more than the law allowed, but the delay was not due to the applicant himself, but to the fact that the 30th day fell on a Sunday, and the Court was closed. The question, therefore, that arises for decision is, whether, when a fixed period is given to do a certain act, and the person bound to perform it is, from no act of his own, but from some act or order of the Court, prevented from carrying it out, he gets the advantage of the next open day. The same point has been the subject of frequent discussion both at home and here. In the case of *Mayer v. Harding*¹ the same question arose. There the Courts were closed from Good Friday until the following Wednesday, and it was held that the transmission of the record on Wednesday was a transmission within the period required by the Act, although the period had expired. That case was followed in the case of *Waterton v. Baker*² and this has since been considered as the leading case in regard to these questions; The broad principle there laid down is that although the parties themselves cannot extend the time for doing an act in Court, yet if the delay is caused not by any act of their own, but by some act of the Court itself--such as the fact of the Court being closed--they are entitled to do the act on the first opening day. This, then, is the general principle; and it has been followed in this Court. In the case of *Hossein Ally v. Donzelle*³ a tenant was sued under Act VIII of 1869, and a decree obtained against him in the terms of Section 52 of that Act, which provides that if the amount of arrears, interest and costs be paid within 15 days from the date of the decree, execution shall be

stayed. Owing to the Court being closed it was impossible to carry out the express terms of the Act; but the amount was paid on the first opening day, and this Court, in conformity with the rules laid down in *Mayer v. Harding*⁴ held that the payment was good. That principle has now been expressly incorporated in the new Act, and one of the questions we have to decide is, where there is an express mention of such a right in Section 66, and no express mention in Section 174, there was any intention of the Legislature to change the law as it was understood at the passing of the Act. We think not. Section 66 made no change. The law is the same now as it was before. Therefore, we think there is no intention on the part of the framers of the law to make any change in the general principle. The applicant will get the benefit of that provision of the law.

2. The rule is, therefore, made absolute with costs.

Cases Referred.

1L.R. 2 Q.B. 410
2L.R. 3 Q.B. 173
3I.L.R. 5 Cal. 906
4L.R. 2 Q.B. 410